* **IN THE HIGH COURT OF DELHI AT NEWDELHI**

% Reserved on : January 24, 2007
Date of Decision : February 2, 2007

\+ W.P. (C) 9403/2004 & CM 6727/2004

\# S.K. TANDON ..... PETITIONER
! Through :Mr.S.K.Bhattacharya, Advocate

versus

$ D.D.A. & ANR. .... RESPONDENT
^ Through: Mr. Yeeshu Jain, Advocate

* **CORAM:**
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. This writ petition challenges the validity of a demand made by the respondent Delhi Development Authority (DDA) by letter dated 18.3.2004 to the petitioner requiring the petitioner to pay a sum of Rs.6,28,276/- in respect of an allotment of an MIG Plot No. 11, Pocket -4, Block-B, Sector 17, measuring 60 Sq. metres under the Rohini Residential Scheme in lieu of the old plot No. 70, Pocket – 14, Sector 24, Phase III. The principal ground on which the petitioner challenges this demand is that 94% of the sum (comprising the first and second instalment) in respect of the said Plot had already been made in 1994 and, therefore, the demand of Rs.6.28 lakhs of the third and final instalment at current cost, which was only Rs. 5790/- in 1994, is

wholly unjustified.

2. The facts in brief are that the petitioner's mother was issued a letter of provisional allotment of a plot No. 70, Pocket-14, Sector 24, Rohini measuring 60 Sq. metres by a letter dated 27.12.1993. The total premium of the plot was fixed at Rs. 94,782.60. The balance amount, after accounting for the amounts already paid, was shown to be Rs. 86,355.41 and it was required to be paid in the following manner:-

"i)	Rs. 33,173.91	being balance of 35% of the total premium (25%of premium of plot plus 10% of the premium as earnest money) within 30 days from the date of issue of demand-cum-allotment letter.
ii)	Rs. 47,391.30	being 50% of the total premium within 90 days from the date of issue of demand- cum- allotment letter.
iii)	Rs. 5,720.20	being 15% of total premium within two months from the date of receipt of communication offering possession or before taking the possession which ever is earlier."

In para 3 of the said letter it was stated:

> "If any instalment of the amounts mentioned above is not paid within prescribed period of the due date, allotment shall stand cancelled

> automatically and no request for restoration of allotment of plot shall be entertained on any grounds whatsoever."

It is not in dispute that the payments of the first and second instalments were made by the petitioner's mother through pay orders dated 27.1.1994 and 25.3.1994. According to the petitioner, since thereafter there was no communication from the DDA offering possession of the Plot, no occasion arose for payment of the third instalment of Rs. 5720.20 which was to be paid within two months from the date of receipt of such communication.

3. In its counter affidavit, the DDA does not say that it issued any such communication informing the petitioner's mother that she could take possession of the flat. On the contrary it is stated that as under:-

> "It is submitted that in the year 1994 though the mother of the petitioner had paid the amount towards 1st and 2nd instalments, but the copy of the 3rd challan were not submitted to the respondent which resulted in the cancellation of said allotment due to non payment."

It is not even DDA's stand that there was a requirement that the allottee of a Plot had to himself or herself submit the copy of the third challan to the DDA. When the DDA says that the copy of the third challan "was not submitted to it", what it really means is that the said challan had not been sent to it by the concerned Bank, which is designated by DDA to facilitate collection of instalment monies. In fact, it appears that intimation regarding the payment of the first and second instalments by the petitioner's mother was also not received

by DDA from the Bank in time. All of this was naturally not in the control of petitioner's mother. This in turn led to DDA not sending her a communication about the possession of the Plot which would have triggered the two month period within which the third instalment would have to be paid. That stage was never reached owing to DDA's failure to take note of the fact that two instalments had already been paid in time. Thus the DDA failed, on its own showing, to perform its part of the condition contained in the original allotment letter dated 27.12.1993. In the above circumstances, DDA is not justified in contending that there was a default on the part of the petitioner's mother in the payment of the third instalment.

4. It appears that the petitioner's mother wrote on 16.8.1996 to the DDA reminding it of the allotment to be made in her favour. However, on the untenable ground that the third instalment had not been paid in terms of the allotment letter, the DDA by its letter dated 21.2.1997 informed the petitioner's mother that the allotment stood cancelled. The petitioner's mother then wrote to the DDA seeking restoration of the allotment and made a representation on 4.4.1998. On 18.8.1998 DDA wrote to her stating:

> "Now the competent Authority has taken a lenient view and has agreed to allot another plot to you subject to the payment of restoration charges @ Rs.200/ per sq. mtrs and the plot in question would be allotted to you in ph-III, Rohini.
>
> As stated in our letter No. F.25 (1103)91/LSB(R)/453 dated 20.7.98, you are requested to pay the interest of Rs.1659/- because of late payment of Ist instalment plus

restoration charges Rs.12,000/- i.e. Rs. 13,659/-

The 3rd instalment of 15% would be charged at current pre-determined rates at the time of allotment of new plot which will be intimated to you due course."

5. The petitioner's mother was aggrieved by the last paragraph of the aforementioned letter where it was stated that the third instalment would be charged at "current pre-determined rates at the time of allotment of new plot." Therefore, while she made payment of the sums of Rs. 1659 (towards interest) and Rs. 12,000/- towards restoration on 19.8.1998, she did not make payment of the third instalment.

6. During this interregnum, the petitioner's mother died and the petitioner made a request that the allotment be mutated in his name. It is not in dispute that all subsequent correspondence has been addressed by the DDA to the petitioner as "mutatee". After following up the matter with the DDA for several years, the petitioner was issued a demand letter dated 18.3.2004 calling upon him to pay a sum of Rs. 6,28,276/- towards the final instalment.

7. Thus the short question that therefore arises is whether the DDA is justified, in the circumstances, in demanding from the petitioner the "current pre-determined cost" of Rs. 6.28 lakhs towards the third instalment of the plot in question. Counsel for the DDA places reliance on a decision of this Court dated 16.7.2004 in ***Kamal Prakash Gupta vs. DDA*** [W.P(C) No. 5891/2003] whereby this Court directed the cost of the Plot to be re-worked by requiring DDA to pay 9% interest

on the amounts deposited by the petitioner there and likewise requiring the said petitioner to pay interest on the balance amount due from him to the DDA. However, the facts of ***Kamal Prakash Gupta's*** case are not in pari materia with the present case. The narration of the facts there reveal that Kamal Prakash Gupta had delayed the payment of the second instalment by three days, which resulted in the cancellation of his allotment. In the present case, however, there is no delay on the part of the petitioner's mother in making payment of any instalment. Since, as already noticed, the DDA failed to write to the petitioner's mother offering possession of the Plot in terms of the original allotment letter, the occasion for making payment of the third instalment did not arise.

8. The facts of the present case lead to the inevitable conclusion that it was the failure of the DDA to intimate the petitioner’s mother that the plot was ready for possession which led to the non-payment of the third instalment. Therefore, the petitioner’s mother could not be visited with the consequences of such failure to pay the third instalment within the time stipulated. The cancellation of her allotment was therefore illegal. In the circumstances, the demand by the DDA of the current pre-determined cost on the date of the revival of the allotment is wholly unjustified and unsustainable in law.

9. As already noticed, pursuant to the letter dated 18.8.1998, the petitioner had already made the payment of Rs.1659 towards interest on the first instalment and Rs. 12,000 towards restoration charges. Since it has been held that the cancellation of the allotment was itself illegal, there is no question of the petitioner having to pay restoration charges. Therefore, the DDA will now have to compute the amount payable, if at all, towards the third instalment in the following

manner: The sum payable by the petitioner towards the third instalment will be computed on the basis of the original allotment letter i.e. Rs. 5720.20. The DDA will, while arriving at the final sum payable by the petitioner, if at all, give credit for the all the payments already made by the petitioner's mother and the petitioner (including restoration charges), and the interest payable by the DDA on such monies in accordance with its prevalent rules.

10. The DDA will make its fresh computation in the aforementioned manner and communicate it in writing to the petitioner within four weeks from today. If any amount is payable by him, the petitioner will make the payment so demanded within 10 days of such intimation being received by him. Not later than four weeks after receipt of such payment, and if no amount is payable not later than four weeks from the date of communication of the fresh computation, the DDA will complete all formalities, execute the necessary documentation conveying the plot in the petitioner's name and put the petitioner in possession of the plot in question i.e. MIG Plot No. 11, Pkt. 4, Block B, Sector 17, Rohini. It may be noticed at this stage that by an interim order dated 31.5.2004 this court directed the said plot to be kept unallotted to any third party pending the outcome of this petition.

11. With the above directions, this writ petition is allowed. The DDA will pay to the petitioner Rs.15,000 as costs within four weeks from today. All applications are disposed of.

Sd/-
S.MURALIDHAR, J.

February 2, 2007
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